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SENATE

{ REPORT
No. 2038 }

HARRY RAY SMITH

JULY 1 (legislative day, JUNE 27) 1952. —Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2763]

The Committee on the Judiciary, to which was referred the bill (S. 2763), for the relief of Harry Ray Smith, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 10 strike the period, insert a comma and add the following:

less any amounts earned by him through other employment during such period.

The purpose of the proposed amendment is contained in the statement below.

PURPOSE

The purpose of the proposed legislation is to confer jurisdiction on the Court of Claims to hear, determine, and render judgment on the claim of Harry Ray Smith against the United States for compensation which he would have received as an immigrant inspector, United States Immigration and Naturalization Service, during the period July 11, 1938, to September 27, 1939, had he not been suspended from the service during such period.

The bill further provides that suit on such claim may be instituted at any time within 1 year after the date of enactment of the legislation. Recovery by the claimant would be reduced by the amount of moneys earned by him through other employment during such period.

STATEMENT

Harry Ray Smith was born in St. James, Minn., on November 18, 1897, of parents who were native-born American citizens. In 1911 the family moved to Canada and the father of Harry Ray Smith

became a citizen of Canada in 1915. In 1917 Harry Ray Smith enlisted in the British Royal Flying Corps.

Some years later (May 17, 1926) Harry Ray Smith was appointed an immigration inspector. He held this position until July 11, 1938, when he was suspended on the grounds that he was ineligible for Federal employment because he had lost his United States citizenship through the naturalization of his father in Canada and had not filed a declaration of intention to become a citizen of the United States. Employment of aliens as immigrant inspectors was expressly prohibited by the Appropriations Act of April 27, 1938 (52 Stat. 289-290).

On May 29, 1939, the Supreme Court of the United States in the case of *Perkins v. Elg* (307 U. S. 325), ruled that citizenship was not lost under the circumstances similar to those in the instant case. Consequently, on September 27, 1939, Mr. Smith was reinstated in his position as immigrant inspector. The Immigration Service, upon advice of the Comptroller General, regarded his absence from duty as leave-without-pay.

In the act of June 10, 1948 (Public Law 623, 80th Cong.), the Congress provided for the payment of salaries to Federal employees for periods of improper separation or suspension from the service, less such amounts as might have been earned by the employee through other employment during such period.

The record is clear that this claimant lost his Government position as the result of an administrative determination which proved erroneous in the light of the Elg decision referred to above. The committee does not feel that the claimant should be required to bear such loss as he may have suffered as result of this administrative determination. However, the committee does not feel that this claimant should have any greater right than that accorded generally to other Federal employees under Public Law 623 of the Eightieth Congress. The committee has, accordingly, amended this legislation to provide that amounts earned by this employee through other employment during the period of his suspension, will be deducted from any award which he might receive as result of this legislation.

The committee has, on occasion, provided for direct payment of claims such as this. However, the committee does not have information concerning the salary of the claimant at the time of his suspension nor the amounts earned by him during the period of his suspension.

The committee therefore recommends favorable consideration of this legislation conferring jurisdiction on the Court of Claims to hear, determine, and render judgment on this claim.

Attached to this report is the report of the Department of Justice submitted in connection with this legislation.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, June 9, 1952.

HON. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 2763) for the relief of Harry Ray Smith.

The bill would confer jurisdiction on the Court of Claims to hear, determine, and render judgment on the claim of Harry Ray Smith against the United States for compensation which he would have received as an immigrant inspector, United States Immigration and Naturalization Service, during the period July 11,

1938, to September 27, 1939, had he not been suspended from the Service during such period. The bill further provides that suit on such claim may be instituted at any time within 1 year after the date of enactment of the act.

From the information contained in the files of the Immigration and Naturalization Service of the Department of Justice, it appears that Mr. Smith, a native of the United States, was suspended on July 11, 1938, on the ground that he was ineligible for Federal employment because he had lost his United States citizenship through the naturalization of his father in Canada and had not filed a declaration of intention to become a citizen. Such employment was expressly prohibited by the Appropriations Act of April 27, 1938 (52 Stat. 289-290). However, the Supreme Court, in the case of *Perkins v. Elg* (307 U. S. 325), on May 29, 1939, ruled that citizenship was not lost under circumstances similar to those in the instant case. Accordingly, Mr. Smith was reinstated and his absence from duty, upon advice of the Comptroller General, was regarded as leave without pay.

Whether the bill should be enacted presents a question of legislative policy concerning which the Department of Justice prefers to make no recommendation. It should be pointed out, however, that the bill as presently drawn would appear to direct that, should the court arrive at a judgment in favor of claimant, such judgment should be in the total amount of salary which he would have earned during the suspension period. In this connection it is pertinent to note that the act of June 10, 1948, Public Law 623, Eightieth Congress, which provides for payment of salaries of Federal employees for periods of improper separation or suspension from the service, directs that such payments shall be in the amount of the Government pay less any amounts earned by the employee through other employment during such period. It is believed that the same provision should be included in the instant bill.

Accordingly, it is recommended that the period at the end of line 10, page 1 of the bill be deleted and a comma substituted therefor, and that the words "less any amounts earned by him through other employment during such period" be added to the sentence.

The Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Sincerely,

A. DEVITT VANECH,
Deputy Attorney General.

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